

**§ 400.451 General.**

(a) FCIC has implemented a system of administrative remedies in its efforts to ensure program compliance and prevent fraud, waste, and abuse within the Federal crop insurance program. Such remedies include civil fines and disqualifications under the authority of section 515(h) of the Act (7 U.S.C. 1515(h)); government-wide suspension and debarment under the authority of 48 CFR part 9, 48 CFR part 409, and 7 CFR part 3017; and civil fines and assessments under the authority of the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812).

(b) The provisions of this subpart apply to all participants in the Federal crop insurance program, including but not limited to producers, agents, loss adjusters, approved insurance providers and their employees or contractors, as well as any other persons who may provide information to a program participant and meet the elements for imposition of one or more administrative remedies contained in this subpart.

(c) Any remedial action taken pursuant to this subpart is in addition to any other actions specifically provided in applicable crop insurance policies, contracts, reinsurance agreements, or other applicable statutes and regulations.

(d) This rule is applicable to any violation occurring on and after January 20, 2009.

(e) The purpose of the remedial actions authorized in this subpart are for the protection of the public interest from potential harm from persons who have abused the Federal crop insurance program, maintaining program integrity, and fostering public confidence in the program.

[73 FR 76887, Dec. 18, 2008]

**§ 400.452 Definitions.**

For purposes of this subpart:

*Act.* Has the same meaning as the term in section 1 of the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8).

*Affiliate.* Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control

both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the disqualification, suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the disqualified, suspended, debarred, ineligible, or voluntarily excluded person.

*Agency.* The person authorized by an approved insurance provider, or its designee, to sell and service a crop insurance policy under the Federal crop insurance program.

*Agent.* Has the same meaning as the term in 7 CFR 400.701.

*Agricultural commodity.* Has the same meaning as the term in section 1 of the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8).

*Approved insurance provider.* Has the same meaning as the term in 7 CFR 400.701.

*Benefit.* Any advantage, preference, privilege, or favorable consideration a person receives from another person in exchange for certain acts or considerations. A benefit may be monetary or non-monetary.

*FCIC.* Has the same meaning as the term in 7 CFR 400.701.

*Key employee.* Any person with primary management or supervisory responsibilities or who has the ability to direct activities or make decisions regarding the crop insurance program.

*Knows or has reason to know.* When a person, with respect to a claim or statement:

(1)(i) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(ii) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(iii) Acts in reckless disregard of the truth or falsity of the claim or statement; and

(2) No proof of specific intent is required.

*Managing general agent.* Has the same meaning as the term in 7 CFR 400.701.

*Material.* A violation that causes or has the potential to cause a monetary loss to the crop insurance program or

it adversely affects program integrity, including but not limited to potential harm to the program's reputation or allowing persons to be eligible for benefits they would not otherwise be entitled.

*Participant.* Any person who obtains any benefit that is derived in whole or in part from funds paid by FCIC to the approved insurance provider or premium paid by the producer. Participants include but are not limited to producers, agents, loss adjusters, agencies, managing general agencies, approved insurance providers, and any person associated with the approved insurance provider through employment, contract, or agreement.

*Person.* An individual, partnership, association, corporation, estate, trust or other legal entity, any affiliate or principal thereof, and whenever applicable, a State or political subdivision or agency of a State. "Person" does not include the United States Government or any of its agencies.

*Policy.* Has the same meaning as the term in section 1 of the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8).

*Preponderance of the evidence.* Proof by information that, when compared with the opposing evidence, leads to the conclusion that the fact at issue is probably more true than not.

*Principal.* A person who is an officer, director, owner, partner, key employee, or other person within an entity with primary management or supervisory responsibilities over the entity's federal crop insurance activities; or a person who has a critical influence on or substantive control over the federal crop insurance activities of the entity.

*Producer.* A person engaged in producing an agricultural commodity for a share of the insured crop, or the proceeds thereof.

*Provides.* Means to make available, supply or furnish with. The term includes any transmission of the information from one person to another person. For example, a producer writes information on forms and gives it to the agent and the agent transmits that information to the insurance provider. In both instances, the information is "provided" for the purpose of this rule.

*Reinsurance agreement.* Has the same meaning as the term in 7 CFR 400.161, except that such agreement is only between FCIC and the approved insurance provider.

*Requirement of FCIC.* Includes, but is not limited to, formal communications, such as a regulation, procedure, policy provision, reinsurance agreement, memorandum, bulletin, handbook, manual, finding, directive, or letter, signed or issued by a person authorized by FCIC to provide such communication on behalf of FCIC, that requires a particular participant or group of participants to take a specific action or to cease and desist from a taking a specific action (e-mails will not be considered formal communications although they may be used to transmit a formal communication). Formal communications that contain a remedy in such communication in the event of a violation of its terms and conditions will not be considered a requirement of FCIC unless such violation arises to the level where remedial action is appropriate. (For example, multiple violations of the same provision in separate policies or procedures or multiple violations of different provisions in the same policy or procedure.)

*Violation.* Each act or omission by a person that satisfies all required elements for the imposition of a disqualification or a civil fine contained in § 400.454.

*Willful and intentional.* To provide false or inaccurate information with the knowledge that the information is false or inaccurate at the time the information is provided; the failure to correct the false or inaccurate information when its nature becomes known to the person who made it; or to commit an act or omission with the knowledge that the act or omission is not in compliance with a "requirement of FCIC" at the time the act or omission occurred. No showing of malicious intent is necessary.

[73 FR 76887, Dec. 18, 2008]

**§ 400.453 Exhaustion of administrative remedies.**

All administrative remedies contained herein or incorporated herein by reference must be exhausted before Judicial Review in the United States